REMARKS

Applicant sincerely thanks the Examiner for his careful examination of this application. Claims 1-41 have been carefully reviewed by Applicant, Claims 42-70 have been added.

Reconsideration of Claims 1-41, rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter is respectfully requested. Consideration of Claims 42-70 is also requested under 35 U.S.C. §101.

The Examiner correctly sets forth this rejection as a two prong test:

1. whether the invention is within the technological arts; and
2. whether the invention produces a useful, concrete, and tangible result.

The Examiner concludes that the invention does in fact produce useful, concrete, and tangible results; and thus, Applicant will concentrate on whether or not the invention is within the technological arts. Applicant respectfully submits that the invention is within the technological arts and thus, that the invention is statutory for the following reasons.

The claimed invention is within the technological arts as it relates to the conception, development, and reduction to practice of an entirely new real estate development structure comprising the division of the fee simple of a plot of ground into privately owned lots, common areas, easements, and rights of way in what is believed to be a new and novel way to produce a useful, concrete, and tangible result in a novel community and a recordable plat in which public rights-of-way for roadways, curbs, and sidewalks are dedicated to a municipality subject to these exclusive rights in and to common services easements held by a decision making authority for the benefit of each of the lot owners of the developed community, with each of the lots, common areas, and easements totally defined and recognized by real estate professionals as fully defined portions of real estate that can be identified, recorded, valued and sold.

The claimed method is within the technological arts as it is not a mere idea in the abstract for two reasons:

1. It is doable; and

2. It has been done.

It is doable, as the Examiner should concede, as it involves identifying and defining lots, common areas, rights of way and easements, identifying and finding particular easements, separating those easements relating to common services from other easements, bundling those easements and providing control over the exclusive rights of the bundled easements in private entities in a manner not heretofore accomplished as well as identifying individual lots, common areas, rights of way, easements or easement areas in a recordable plat in a manner not heretofore accomplished. The concept of real estate easements is old and it has been known for sometime that easements may be defined in a variety of ways limited only by the drafter and the language in which the easement is defined. Once defined, easements can be created, bought and sold, licensed, or otherwise exploited. These easements and the steps of creating them are no more of an abstract idea, law of nature, national phenomena, etc. than a step in a business method or in an accounting method, both heretofore held to be statutory inventions. See *State Street Bank & Trust Co. v. Signature Financial Group, Inc.* (CA FC) 47 USPQ2d 1596 (7/23/1998) and its progeny of cases

Additionally, this new and novel definition of easements and bundling of easements is within the technological arts as it defines a new and novel plat for a subdivision which allows for municipalities to provide public rights-of-way of roadways, curbs, sidewalks, etc. but prevents the municipality or even the lot owners from access to their lots for providing common services except through a privately owned entity which controls the private easements defined.

It has been done as, in fact, new subdivisions created by the methods of this invention are in existence. Currently, the recorded plat of the Centennial, Highland Springs, and Oak Hall subdivisions located in Hamilton and Hendricks counties of the State of Indiana are the product of the performance of the processes disclosed and claimed by this application.

The common services easements of the invention are within the technological arts as they are even more tangible than steps of a business method or an accounting method as they can be fully defined, purchased, and sold and are real estate. Accounting methods and business methods usually are more abstract than real estate easements or plats inasmuch as they are intangible properties created by either agreement language, or patent or a trade secret law. Only once defined by a patent or a trade secret or an agreement are these method steps fully definable and sellable in the marketplace. Not so with real estate lots and easements. They can be defined by recorded documents, can be recorded in real estate recording governmental facilities and may be easily bought and sold. These rights do not have to be separately defined or created by the patent or trade secret laws prior to sale. These saleable rights in real estate are well defined by commercial practices and recognized by both statutory and decisional laws relating to real estate and are tangible real estate, not intangible property.

Real estate lots, rights of way, common areas, or easements are not abstract ideas which do not apply, involve, use, or advance the technological arts because the recited steps can be performed in the mind of the user or by use of a pencil and paper. These arguments were rejected as they applied to accounting and business methods, when both methods became patentable. These arguments are only analogous and do not directly apply to Applicant's claims as Applicants' claims define recordable lots, easements, rights of way and results in recordable plats, separate and apart from the patent laws. Because Applicants' process as defined by the

claims produce new and novel recordable easements and new and novel recorded plats, Applicants' claims define advances in the technological arts by definition.

Reconsideration of Claims 1-41, rejected under 35 U.S.C. §103(a) as being unpatentable over Modern Real Estate Practice by Galaty et al (hereinafter "Galaty"), is respectfully requested. Consideration of Claims 42-70 is also respectfully requested.

The Examiner admits that Galaty does not teach or suggest Applicant's invention as claimed in Claim 1, 2, 12, 20, or 33.

> "1. A process for developing real estate, comprising the steps of: separating private easements for the provision of common services in a developed community from dedicated public rights-of-way; establishing one or more decision making authorities to control said private easements as privately owned entities and to identify and contract with various service providers; precluding access to said private easements by individual lot owners in said developed community and governmental franchisees for providing said common services; and providing said common services to said developed community through said one or more decision making authorities, said one or more decision making authorities obtaining common services from one or more common services providers, respectively."

> "2. A process by a developer entity for establishing in at least one privately owned access entity the beneficial and exclusive ownership ~~of~~ and control over access to common services easements within a developed community, comprising the steps of: acquiring fee simple ownership in a parcel of real estate for developing into a community; transferring exclusive rights in and to said common services easements within said parcel to said at least one access entity; and dedicating public rights-of-way for roadways, curbs, and sidewalks to a municipality, said dedicated public rights-of-way being taken by said municipality subject to said exclusive rights, said municipality having no control over common services access as a result of said dedicated public rights-of-way, said common services providers having acquired rights through said municipality having no access to said community."

> "12. A process for obtaining a license for access to private common services easements on a parcel of real estate, which comprises the steps of: assisting a real estate developer in establishing private ownership and control over common services easements within said parcel of real estate to be developed into a community; and implementing a fee structure that encourages the owner of said private common services easements to enter into and maintain license arrangements that permit at least one licensee to utilize said private common

services easements for providing common services to said community; said license arrangements providing a competitive shield for establishing said licensees as preferred sources of common services for said community."

"20. A process for providing common services to a developed community which comprises the steps of: entering into a license arrangement with an access entity that owns and controls at least some of the common services easements of a parcel of real estate to be developed as a community, said license arrangement permitting access to and utilization of said easements; and utilizing said easements for providing common services to said community; wherein owners of lots within said community contract with a single source provider for the provision or coordination of said common services."

"33. A method of separating real estate easements from land ownership comprising the steps of: acquiring fee simple title in a parcel of real estate by a developer; separating in gross common services easements from said fee simple title; separating the public right-of-way from said common services easements and said fee simple title; separating all other easements from said common services easements and from said public right-of-way and from said fee simple title; transferring at least one of said common services and all other easements to a privately owned company for a fee; and dedicating said public right-of-way to the public; said public right-of-way being dedicated subject to said common services and all other easements previously transferred to said privately owned company thereby eliminating public control over said transferred easements and all public rights to access to said parcel for providing common services."

The Examiner admits that Galaty does not teach anything with regard to how to best gain greater control over service providers in view of deregulation, does not teach anything with regard to separating public easements from private easements and the establishment of the private easements in a privately owned entity to deal with the provision of various services to the community. Galaty only suggests sublicensing and decision making authority in a privately owned entity in the form of a condominium association or a home owner association which the Examiner acknowledges are different from and only analogous of Applicant's access entity. Galaty does not teach or suggest separating private easements for the provision of common services from the public rights-of-way preventing access to the private easements by governmental franchisees and the lot owners. The Examiner respectfully attempts to fill in the

"gaps in both logic and structure" by taking official notice that it would have been obvious to one of ordinary skill in the art at the time of the of invention made to conclude from Galaty that Applicant's claims are obvious. This Applicant submits is a giant step that the Examiner cannot legally or logically take. Who suggests separating private easements for providing common services from public rights-of-way and then conveying them to a privately owned entity? Who suggests using privately owned entities for the provision of common services to a community? Who suggests having the privately owned entities own and control all infrastructure relating to the provision of common services to a community such that different providers share the use of infrastructure and all providers have access to the community on a competitive bid basis? Certainly, Galaty's discussion of condominiums and homeowners associations do not.

The Examiner has taken official notice that it would have obvious to one or ordinary skill in the art to separate private easements for the provision of common services in a developed community from the public rights-of-way to include utilities such as cable, telephone, gas, electric, etc in view of to the passage of the Telecommunications Act of 1996 in which the regulation of the provision of common services was decreased in certain respects to give customers greater control in choosing individual service providers. However, that act was only one piece of the puzzle, and provided no suggestion or teaching of the steps of Applicant's process.

The Telecommunication Act of 1996 only dealt with telephone services, cable services, internet services, and video on demand services. It had nothing to do with the provision of water, sewer, natural gas, electricity, or other common services or roadways, curbs, sidewalks and the like. The Telecommunication Act of 1996 did not teach or suggest how these services or

even the services to which it pertained could be divided or separated from the dedication of public rights-of-way in the performance of Applicant's process or made available economically.

Another piece to the puzzle is how to avoid Federal jurisdiction, including but not limited to the Federal Trade Commission and the Federal Communication Commission, over public rights-of-way dedicated to a municipality or other government agencies. Any new approach with regard to the provision of common services to a community thus must eliminate such jurisdiction as well as access through municipal rights-of-way.

Any change in providing common services to a development is a change of decades of public policy supporting the existence of only one utility company for each of the phone, cable, electric, sewer, natural gas, and water services within a municipality. Recognition of these natural monopolies are logically supported by rationalizing that the economic benefit of the municipality or governmental entity could best be served if the high costs of government support for the common service are amortized among all residents. In this long standing tradition, any change required recognition of the proposed changes, the effects on developed communities, and the new regulatory environment which transcends traditional real estate development practice had to be overcome. Some municipalities would not rename a public rights-of-way dedication subject to common services easements without substantive rights until full disclosure was made and they were convinced that all was consistent with local ordinances and state and federal laws.

In addition, four conditions had to be recognized. First, the change in the national policy toward deregulation of industries that has traditionally been denied in natural monopolies and utilities. Second, advances in technology that have dramatically reduced the cost of providing these common services including use of the same infrastructure by multiple service providers and numerous service providers allowing competition between service providers. Third, the

growing presence and usefulness of e-commerce shopping sites, interesting content, and widespread access of information through the internet globally and a recognition of the scope of these services and the way we shop, learn, transact business, and communicate. Fourth, the control necessary to provide an economic climate permitting competition and avoiding governmental jurisdiction over the provision of common services.

Even if one recognizes all four of these factors and puts together all of the pieces of the puzzle confronting Applicants, Applicants respectfully submit that it is not obvious as to how to best take advantage of all of these factors to enhance the development of real estate and provide lot owners with more choices in obtaining common services.

Applicants' process as defined by Claim 1 comprises essentially three steps:

1. Defining private easements for the provision of common services, separating these easements from both the fee simple and the dedicated public rights-of-way, and conveying those easements to a publicly held, legally recognizable decision making authority;

2. Precluding access to the private easements by both individual lot owners in said developed community and governmental franchisees for providing the common services; and

3. Providing the common services to the developed community through the decision making authority from one or more common services providers in a manner not allowing competing common service providers access.

Applicants' process results in a developed community having one or more decision making authority with full control over access to the community and ownership of infrastructure

pertaining to common services and with full authority to negotiate with service providers for the best services at the best price for each of the lot owners with considerable negotiation leverage.

Regarding Claims 2 and 33, the language of Claims 2 and 33 set forth the process by which Applicants' process claimed in Claim 1 establishes and separates the private easements for the provision of common services in a development community from the dedicated public rights-of-way. Because there are different ways of accomplishing these easements, Applicants' process as claimed by Claims 2 and 33 is not obvious. Applicants' process as claimed by Claims 2 and 33 is not a matter of choice but is Applicants' own way of establishing exclusive ownership and control over access to common service easements within a developing community using a privately owned access entity with recorded ownership of the easements to prevent both the municipality or any lot owner within the developed community access or control through said dedicated public rights-of-way or otherwise. Galaty makes no mention of or teaches or suggests of such a process.

Claims 3-11 are each dependent upon Claim 2. Thus each of these claims include all of the language of Claim 2 and are submitted to be allowable for the same reasons as reiterated herein above with regard to Claim 2. Claim 3 further requires:

> "said exclusive rights comprise in gross easements and specific area easements."

With regard to Claim 3, Applicants utilize exclusive rights consisting of one or more in gross easements, one or more specific area easements, or a combination of the two. Claim 3 claims exclusive rights which comprise an in gross easement and specific area easements. Only Applicants have recognized the advantages. This choice is not an obvious choice in view of Galaty or general practice or any other teaching or suggestion. Applicants' decisions are made only after an academic analyses of (1) the national policy toward deregulation of industry, (2) the

technology available to reduce the cost of providing common services including common ownership and multiple use of infrastructure, and (3) how to obtain and maintain a control over the provision of common services necessary and to avoid interference from the local municipality, the FCC or the FTC. The method claimed by Claim 3 is a new and novel improvement in the technological arts which produces a useful, concrete, and tangible result within the technological arts which is unobvious in view of the teachings of Galaty and prior practice.

Claim 4 further requires:

> "said exclusive rights comprise specific area easements, and wherein any other easements for providing common services within said developed community are restricted by declarations, covenants and restrictions governing and running with said parcel of real estate."

Claim 4 requires as part of the exclusive rights, specific area easements for providing common services that are restricted by declarations, covenants, and restrictions governing and running with the parcel of real estate, another unobvious useful, concrete and tangible result within the technological arts. This structure is part of that structure which prevents access to providers of common services to the community through a municipality that has been dedicated the public rights-of-way or otherwise.

Claim 5 further requires:

> "said developer entity and said access entity are separate legally recognized entities."

Claim 5 requires a process of separating private easements from the dedicated public rights-of-way and conveying these easements to a privately owned decision making authority which is different from the developer entity, another useful, concrete and tangible result within the technological arts that is unobvious in view of both Galaty and prior practice. This structure is

part of that structure which prevents access to providers of common services to the community through a municipality that has been dedicated the public rights-of-way or otherwise.

Claim 6 further requires:

> "said exclusive rights transferred by said developer entity to said access entity include the right to establish infrastructure for common services on both commonly owned and privately owned areas within said community."

Claim 6 requires the exclusive rights include the rights to establish infrastructure and to hold title to and control the infrastructure for common services on both commonly owned and privately owned areas within the community, another tangible result within the technological arts which is unobvious. The infrastructure, the ownership thereof, the location thereof, and the licensing of the use thereof are all unobvious inasmuch as there is no teaching or suggestion in Galaty or in prior practice. This structure is part of that structure which prevents access to providers of common services to the community through a municipality that has been dedicated the public rights-of-way or otherwise.

Claim 7 further requires:

> "said exclusive rights transferred by said developer entity to said access entity include the rights to contract with providers of common services for providing said common services to said community."

Claim 7 requires the exclusive rights include the right to contract with providers of common services rather than to have the access entity provide those services itself. This structure is part of that structure which prevents access to providers of common services to the community through a municipality that has been dedicated the public rights-of-way or otherwise. This is more structure which is a tangible result within the technological arts which is unobvious in view of Galaty or prior practice.

Claim 8 further requires:

> "the step of recording said transferring of said exclusive rights with an appropriate governmental real estate records office before said dedicating step, said common services easements appearing within the chain of title of said parcel before said dedication of said public rights-of-way and said municipality takes said dedication subject to said exclusive rights."

Claim 8 requires the recording of exclusive rights with an appropriate governmental real estate records office before performing the dedication step in order to accomplish Applicants' purpose of excluding municipalities and the lot owners from the exclusive rights in a non-obvious manner and to establish the necessary control over the provision of common services. This structure is part of that structure which prevents access to providers of common services to the community through a municipality that has been dedicated the public rights-of-way. This is another tangible result within the technological arts which is unobvious.

Claim 9 further requires:

> "said common services comprise one or more services selected from the group of services consisting of: cable services, internet services, intranet services, local telephone services, long distance telephone services, video-on-demand services, and security monitoring services."

Claim 10 further requires:

> "said common services comprise one or more services selected from a group of deregulated utility services consisting of: sewer services, water services, gas services, and electricity services."

Claims 9 and 10 place in Markush form a list of the exclusive rights and common services Applicants' method provides. Since there is no teaching or suggestion in Galaty or in prior practice of private control over these rights, such is not obvious.

Claim 11 further comprises:

> "each step is performed pursuant to obligations arising out of a system of interrelated contractual requirements regarding the development of said community."

Claim 11 requires each step to be performed pursuant to obligations arising out of a system of interrelated contractual requirements. This structure is part of that structure which prevents access by providers of common services to the community through a municipality that has been dedicated public rights-of-way. Applicants have performed the steps pursuant to a system of interrelated contractual requirements which advances the technological arts as it prevents any municipality or governmental entity from maintaining that it has rights to the development for the provision of common services.

Claim 12 is for a process which requires a real estate developer to establish private ownership and control of common services easements within the parcel of real estate to be developed and to implement a license arrangement that encourages the owner of the private common services easements to enter into licenses to permit at least one licensee to utilize the private common services arrangements for providing common services to the community, the license arrangement and the private ownership and control over the common services easements providing a complete separation of the common services easements and the dedicated rights-of-way and a competitive shield for establishing the at least one licensee as a preferred source of common services for the community. Galaty teaches a license as a personal privilege, but different from an easement. Galaty does not teach or suggest anything further or even any process of obtaining a license or assisting a real estate developer in establishing private ownership in and maintaining control of common service easements within the parcel and licensing the same or implementing a fee structure that encourages the owner of the private services easements to use the fee structure to provide a competitive shield for the provider of

common services to the community. Claim 12 provides steps of a process which results in an unobvious way and a useful, concrete, and tangible result within the technological arts, i.e. a group of licenses and a competitive shield for licensees, and preferred sources of common services.

Claims 13 and 43 are each dependent upon Claim 12. Thus each of these claims include all of the language of Claim 12 and are submitted to be allowable for the same reasons as reiterated herein above with regard to Claim 12. Claim 13 further requires:

> "wherein said owner of said private common services easements is at least one private access entity."

Claim 13 requires utilizing at least one private access entity which may be the developer or a home owners association or a for-profit or a non-profit legal entity to own the common services easements. Only Applicants teach this non-obvious embodiment of Applicants' method. This structure is part of that structure which prevents access to providers of common services to the community through a municipality that has been dedicated the public rights-of-way or otherwise. This is more structure which is a tangible result within the technological arts which is unobvious in view of Galaty or prior practice.

Claim 43 further requires:

> "said license agreements provide common services for said community through a single source."

Claim 43 requires a "single source" which is one embodiment of Applicants' structure. This structure is part of that structure which prevents access to providers of common services to the community through a municipality that has been dedicated the public rights-of-way or otherwise. This is more structure which is a tangible result within the technological arts which is unobvious in view of Galaty or prior practice.

Claim 14 is dependent upon Claim 13 and thus includes all of the language of Claims 12 and 13. Claim 14 is submitted to be allowable for the same reasons as reiterated hereinabove with regard to Claims 12 and 13. Claims 14 further requires:

> "said establishing step comprises the steps of: acquiring fee simple ownership in a parcel of real estate for developing into a community; transferring exclusive rights of said common services easements in said parcel to said at least one access entity; and dedicating public rights-of-way for roadways, curbs, and sidewalks to a municipality, said dedicated public rights-of-way being taken by said municipality subject to said exclusive rights, said municipality having no control over common services access as a result of said dedicated public rights-of-way, and said common services providers having acquired rights through said municipality having no access to said community."

Claim 14 requires the steps of Applicants' method of establishing private ownership and control of common services easements within a parcel of real estate to be developed in much the same language as Claim 2. Thus, all of the comments made hereinabove with regard to Claim 2 are applicable. This structure is part of that structure which prevents access to providers of common services to the community through a municipality that has been dedicated the public rights-of-way. This is more structure which is a tangible result within the technological arts which is unobvious in view of Galaty or prior practice.

Claims 15-17 and 19 are each dependent upon Claim 14. Thus, Claims 15-17 and 19 each include all of the language of Claims 12, 13 and 14 and are submitted to be allowable for the same reasons as reiterated herein above with regard to Claims 12, 13 and 14. Claim 15 further requires:

> "said common services comprise advanced bundled telecommunication services."

Claim 16 further requires:

> "said common services comprise premium advanced bundled telecommunication services."

Claims 15 and 16 require common services to comprise advanced bundled telecommunication services or premium advanced bundled telecommunication services as defined in Applicants' specification on pages 26-27.

Claim 17 further requires:

> "said competitive shield comprises minimum access fee amounts and most favored nations status under which said private access entity may grant licenses to other common service providers in the event said fee structure is equaled or bettered by another common service provider."

Claim 17 requires the competitive shield for the common services providers to have minimum access fee amounts and most favored nation status. This is a totally non-obvious provision which provides the economic incentive and establishes a licensee as a preferred source of common services for the community.

Claim 19 further requires:

> "said license permits said licensee to sublicense use of said private easements to individual providers of services included in said common services."

Claim 19 permits licensees to sublicense the use of private easements to individual providers of services including common services. These licenses and sublicenses are part of the structure which prevents access to providers of common services to the community. The use of licenses for this purpose is not suggested or taught by Galaty or any prior use. This is more structure which is a tangible result within the technological arts which is unobvious in view of Galaty or prior practice.

Claim 18 is dependent upon Claim 17 and thus includes all of the language of Claims 12, 13, 14 and 17. Claim 18 is submitted to be allowable for the same reasons as reiterated hereinabove with regard to Claims 12, 13, 14 and 17. Claim 18 further requires:

> "said competitive shield additionally comprises a reduction in said access fee amounts when said common services comprise advanced bundled telecommunication services, said reduction being coupled to aggregate amounts of individualized access fees for individual services included in said common services."

Claim 18 requires a reduction in the access fee amount when the common services comprise advance bundled technological services. Who teaches such an economic incentive in the form of a fee reduction? Only Applicants. Similarly, Claim 19 permits licensees to sublicense use of private easements to individual providers of services included in the common services. This structure is part of that structure which prevents access to providers of common services to the community through a municipality that has been dedicated the public rights-of-way. Who teaches that concept as a way of maintaining the separation of common services easements from public rights-of-way and providing the best possible services to the beneficiaries of Applicants' process? These concepts are not taught by Galaty or any prior usage and are completely unobvious and tangible advances within the technological arts.

Claim 20 requires license arrangements with an access entity to permit access and utilization of private easements wherein the owners of lots within the community contract with a single source provider for the provisions of common services. This structure is part of that structure which prevents access to providers of common services to the community through a municipality that has been dedicated the public rights-of-way or otherwise. This concept is an entirely new, useful and unobvious result within the technological arts in view of Galaty or any prior usage.

Claims 21, 23-25, 28-32, and 44 are each dependent upon Claim 20. Thus, each of these claims include all of the language of Claim 20 and are submitted to be allowable for the same reasons as reiterated hereinabove with regard to Claim 20. Claim 21 further requires:

> "said access entity has beneficial and exclusive ownership of and control over all access to said common services easements within said developed community."

Claim 21 further restricts the process of Claim 20 to require the access entity to have beneficial and exclusive ownership of and control over all access to the common services easements within the developed community. A totally new and novel tangible result within the technological arts.

Claim 23 further requires:

> "said common services are provided to a plurality of lots in said community over fewer than three cables."

Claim 24 further requires:

> "said cables are of a type selected from the group of cables consisting of co-axial and fiber optic cables."

Claim 25 further requires:

> "said license arrangement permits said single source provider to sublicense utilization of said easements to a plurality of individual providers of services included in said common services."

Claims 23, 24 and 25 claim advantages provided by Applicants' method in placing the exclusive rights in a publicly held access entity. These advantages include use of the easements and easement infrastructure, and even the same cables, conduits, used by several common service providers. This is now possible because the same entity controls the easements and owns the infrastructure. This structure is part of that structure which prevents access to providers of common services to the community through a municipality that has been dedicated the public

rights-of-way or otherwise. This is more structure which is a tangible result within the technological arts which is unobvious in view of Galaty or prior practice.

Claim 28 further requires:

> "said common services comprise one or more services selected from the following group of services consisting of: cable services, internet services, intranet services, local telephone services, long distance telephone services, video-on-demand services, and security monitoring services."

Claim 29 further requires:

> "said common services comprise one or more services selected from a group of deregulated utility services consisting of: sewer services, water services, gas services, and electricity services."

Claims 28 and 29 place in Markush format the list of common services to which Applicants' method is directed.

Claim 30 further requires:

> "said common services comprise advanced bundled telecommunication services."

Claim 31 further requires:

> "said common services comprise premium advanced bundled telecommunication services."

Claims 30 and 31 require the common services to comprise advance bundled telecommunication service and premium advance bundled telecommunication as defined by the specification at pages 26-27.

Claim 32 further requires:

> "said license arrangement is entered into pursuant to obligations arising out of a system of interrelated contractual requirements regarding the development of said community."

Similarly to Claims 15 and 16, Claim 32 requires a license arrangement based upon the obligations of a system of interrelated contractual requirements regarding the development of the community.

Claim 22 is dependent upon Claim 21 and thus includes all of the language of Claims 20 and 21. Claim 22 is submitted to be allowable for the same reasons as reiterated hereinabove with regard to Claims 20 and 21. Claim 22 further requires:

> "said beneficial and exclusive ownership of and control over said access to said common services easements is created by a process which comprises the steps of: acquiring fee simple ownership in a parcel of real estate for developing into a community; transferring exclusive rights of said common services easements in said parcel to at least one said access entity; and dedicating public rights-of-way of said parcel for roadways, curbs, and sidewalks to a municipality, said dedicated public rights-of-way being taken by said municipality subject to said exclusive rights, said municipality having no control over common services access as a result of said dedicated public rights-of-way, and said common services providers having acquired rights through said municipality having no access to said community."

Claim 22 requires the steps of setting up said beneficial and exclusive ownership and control over the common services easements of a parcel or real estate. The discussion hereinabove with regard to Claims 2 and 14 also relate to the limitations of Claim 22. By the process of Claim 22, the municipality has no control over common services or access as a result of said dedicated public rights-of-way. Thus, lot owner having purchased lots within the community and common services providers having acquired rights through the municipality have no access to the community. This structure is part of that structure which prevents access to providers of common services to the community through a municipality that has been dedicated the public rights-of-way or otherwise. This is more structure which is a tangible result within the technological arts which is unobvious in view of Galaty or prior practice.

Claim 24 is dependent upon Claim 23 and thus includes all of the language of Claims 20 and 23. Claim 24 is submitted to be allowable for the same reasons as reiterated hereinabove with regard to Claims 20 and 23. Claim 24 further requires:

> "said cables are of a type selected from the group of cables consisting of co-axial and fiber optic cables."

Claims 26 and 27 are each dependent upon Claim 25. Thus, each of these claims include all of the language of Claims 20 and 25 and are submitted to be allowable for the same reasons as reiterated hereinabove with regard to Claims 20 and 25. Claims 26 further requires:

> "at least one of said individual service providers is a wholly owned subsidiary of said single source."

Claim 27 further requires:

> "said individual providers provide said common services to said single source at a central receiving facility wherefrom said single source distributes said common services to a plurality of lots in said community."

Claims 24, 26 and 27 claim structural ramifications of which can be the result of Applicants' process in a preferred embodiment to provide single service distribution of common services.

Claims 34-37 are each dependent upon Claim 33. Thus, each of these claims include all of the language of Claim 33 and are submitted to be allowable for the same reasons as reiterated hereinabove with regard to Claim 33. Claim 34 further requires:

> "said steps further comprise said privately owned company constructing utility conduits on said parcel in accordance with said easements licensed to said company, said privately owned company sub-licensing service providers for a fee to provide common services to owners of any portion of said parcel, and said privately owned company allowing said sub-licensed common services providers to use said conduits."

Claim 34 further requires the privately owned company having a license of the easements, to construct utility conduits on a parcel in accordance with the easements licensed, charging a fee both to the owners of any portion of the parcel and privately owned companies sublicensed.

Claim 35 further requires:

> "said common services providers provide one or more common services to owners of portions of said parcel selected from the group of services consisting of cable services, internet services, intranet services, local telephone services, long distance telephone services, video-on-demand services and security monitoring services."

Claim 36 further requires:

> "said common services providers provide one or more common services to owners of portions of said parcel selected from the group of deregulated utility services consisting of sewer services, water services, gas services, and electricity services."

Claims 35 and 36 place in Markush format the services to which Applicants' method provides.

Claim 37 further requires:

> "said fee is proportioned and passed on to said private company by said service providers."

Claims 37 and 38 both claim the fee to be proportioned and passed on to a privately owned company in accordance with Applicants' method.

Claim 38 is dependent upon Claim 37 and thus includes all of the language of Claims 33 and 37. Claim 38 is submitted to be allowable for the same reasons as reiterated hereinabove with regard to Claims 33 and 37. Claim 38 further requires:

> "said fee is proportioned and passed on to the owner of said privately owned company."

Claim 39 is dependent upon Claim 38 and thus includes all of the language of Claims 33, 37 and 38. Claim 39 is submitted to be allowable for the same reasons as reiterated hereinabove with regard to Claims 33, 37 and 38. Claim 39 further requires:

> "the steps of said owner of said privately owned company developing a market plan for selling portions of said parcel by a developer, and said owner engaging in the training of said developer in marketing portions of said parcel."

Claim 40 is dependent upon Claim 39 and thus includes all of the language of Claims 33, 37, 38 and 39. Thus Claim 40 is submitted to be allowable for the same reasons as reiterated hereinabove with regard to Claims 33, 37, 38 and 39. Claim 40 further requires:

> "the steps of said developer contracting the construction of roads, other common infrastructure, homes on individual portions of said parcel, and the construction on said parcel and the development of said parcel."

Claims 39, 40 and 41 places the responsibility of developing a market plan in the owner of the privately owned company the contracting of the construction of roads and common infrastructure with the developer, and the management of all the licensed and sublicensed service providers by the privately owned company in accordance with Applicants' method. These claims further define the preferred embodiment resulting from the performance of Applicants' method. This structure is part of that structure which prevents access to providers of common services to the community through a municipality that has been dedicated the public rights-of-way or otherwise. This is more structure which is a tangible result within the technological arts which is unobvious in view of Galaty or prior practice.

Claim 41 is dependent upon Claim 34 and thus includes all of the language of Claims 33 and 34. Claim 41 is submitted to be allowable for the same reasons as reiterated hereinabove with regard to Claims 33 and 34. Claim 41 further requires:

"said privately owned company manages all of said sub-licensed service providers."

Claims 39, 40 and 41 places the responsibility of developing a market plan in the owner of the privately owned company the contracting of the construction of roads and common infrastructure with the developer, and the management of all the licensed and sublicensed service providers by the privately owned company in accordance with Applicants' method. These claims further define the preferred embodiment resulting from the performance of Applicants' method.

Claims 44, 45, 47 and 59 are each dependent upon Claim 2 and thus include all of the language of Claim 2. Claims 44, 45, 57 and 59 are submitted to be allowable for the same reasons as reiterated hereinabove with regard to Claim 2. Claim 44 further requires:

"said transferring step includes examining the recorded title documents relating to said parcel of real estate to determine what easements, reversions and other property rights exist that said parcel of real estate is subject relating to access by a common service provider to said parcel, and determining that no such easements, reversions or other property rights exist or otherwise relieving said parcel of real estate of said property rights prior to defining exclusive rights in and to said common service easements within said parcel of real estate and transferring said exclusive rights to said access entity."

Claim 45 further requires:

"said dedication of said public rights-of-way for roadways, curbs, and sidewalks consists of the dedication of only surface rights for roadways, curbs, and sidewalks with the sub-surface rights being reserved and maintained as common areas."

Claim 47 further requires:

"said exclusive rights are transferred by said transferring step in gross."

Claim 59 further requires:

"said privately owned access entity licensing a service provider for the provision of services to said developed community."

Such licenses are also a method of maintaining separation between the exclusive rights in the common services easements and the fee simple and the dedicated rights. Under the law licensed rights between two private entities cannot be utilized to gain access to the community by non parties to the license. This structure is part of that structure which prevents access to providers of common services to the community through a municipality that has been dedicated the public rights-of-way or otherwise. This is more structure which is a tangible result within the technological arts which is unobvious in view of Galaty or prior practice.

Claim 46 is dependent upon Claims 45 and 2 and thus includes all of the language of Claims 45 and 2. Claim 46 is submitted to be allowable for the same reasons as reiterated hereinabove with regard to Claims 2 and 45. Claim 46 further requires:

> "said developer entity transfers exclusive rights in and to said common areas to a lot owners association."

Claims 48, 49, 50, and 51 are each dependent from Claim 22. Thus, Claims 48, 49, 50 and 51 each include all of the limitations of Claims 20, 21 and 22 and are submitted to be allowable for the same reasons as reiterated hereinabove with regard to Claims 20, 21 and 22. Claim 48 further requires:

> "said transferring step includes examining the recorded title documents relating to said parcel of real estate to determine what easements, reversions and other property rights exist that said parcel of real estate is subject with regard to access by a common service provider to said parcel, and determining that no such easements, reversions or other property rights exist or otherwise relieving said parcel of real estate of said property rights prior to defining exclusive rights in and to said common service easements within said parcel of real estate and transferring said exclusive rights to said access entity."

Claim 48 requires those steps of Applicants' process by which the exclusive rights in and to the common service easements are separated from the fee simple and transferred to Applicants'

access entity. See also Applicants' comments regarding Claims 1-3, 14, 22 and 33. This structure is part of that structure which prevents access to providers of common services to the community through a municipality that has been dedicated the public rights-of-way or otherwise. This is more structure which is a tangible result within the technological arts which is unobvious in view of Galaty or prior practice.

Claim 49 further requires:

> "said dedication of said public rights-of-way for roadways, curbs, and sidewalks consists of the dedication of only surface rights for roadways, curbs, and sidewalks with the sub-surface rights being reserved and maintained as common areas."

Claim 49 requires the dedication of said public rights-of-way to include only surface rights for roadways, curbs, and sidewalks thus, preventing the subsurface rights from being used for access to the community by common services providers or others. Sometimes municipalities may utilize the sub surface rights under dedicated public rights-of-way to provide access to a developed community for common services providers. This provision retains those rights in the community as common areas and thus preventing those rights from being used by common services providers. This structure is part of that structure which prevents access to providers of common services to the community through a municipality that has been dedicated the public rights-of-way or otherwise. This is more structure which is a tangible result within the technological arts which is unobvious in view of Galaty or prior practice.

Claim 50 further requires:

> "said developer entity transfers exclusive rights in and to said common areas to a lot owners association."

Claim 51 further requires:

> "said exclusive rights are transferred in gross."

Claim 52 is dependent upon Claims 27, 25 and 20 and thus includes all of the language of Claims 27, 25 and 20. Claim 52 is submitted to be allowable for the same reasons as reiterated hereinabove with regard to Claim 20. Claim 52 further requires:

> "said single source distributes said common services to a plurality of lots in said community through a computer network."

Claims 53-56 are each dependent upon Claim 33. Thus, Claims 53-56 include all of the language of Claim 33 and are submitted to be allowable for the same reasons as reiterated hereinabove with regard to Claim 33. Claim 53 further requires:

> "said transferring step includes examining the recorded title documents to said parcel of real estate to determine what easements, reversions and other property rights that said parcel of real estate is subject relating to access to said parcel of real estate by a common service provider, and determining that no such easements, reversions or other property rights exist or otherwise relieving said parcel of real estate from said property rights prior to defining exclusive rights in and to said common service easements within said parcel of real estate and transferring said exclusive rights to said access entity."

Claim 53 requires each of Applicants' steps in separating the exclusive rights regarding access to the community by a common services provider from the fee simple of the real estate and transferring said exclusive rights to said access to entity. Claim 44 claims the steps of Applicant's process in separating from the fee simple the exclusive rights regarding access to the parcel of real estate for the provision of common services. See Applicants' comments regarding Claims 1, 2, 8, 14, 22 and 33. This structure is part of that structure which prevents access to providers of common services to the community through a municipality that has been dedicated the public rights-of-way or otherwise. This is more structure which is a tangible result within the technological arts which is unobvious in view of Galaty or prior practice.

Claim 54 further requires:

> "said dedication of said public rights-of-way for roadways, curbs, and sidewalks consists of the dedication of only surface rights for roadways, curbs, and sidewalks with the sub-surface rights being reserved and maintained as common areas."

Claim 54 requires the dedication of only surface rights in the dedication of said public rights of way. The subsurface rights are reserved and maintained as common areas of the community. Sometimes municipalities may utilize the sub surface rights under dedicated public rights-of-way to provide access to a developed community for common services providers. This provision retains those rights in the community as common areas and thus preventing those rights from being used by common services providers. This structure is part of that structure which prevents access to providers of common services to the community through a municipality that has been dedicated the public rights-of-way or otherwise. This is more structure which is a tangible result within the technological arts which is unobvious in view of Galaty or prior practice.

Claim 55 further requires:

> "said developer entity transfers exclusive rights in and to said common areas to a lot owners association."

Claim 56 further requires:

> "said exclusive rights are transferred in gross."

The transfer of the exclusive rights in gross to Applicant's access entity eliminates any debate as to whether or not any rights which may provide access to the community are owned by anyone other than Applicant's access entity. Under the law, a transfer "in gross" eliminates this possibility. Under the law when rights are transferred in gross, there are no exceptions, thus accomplishing Applicants' desired separation between the exclusive rights in the common services easements from the fee simple and the dedicated rights. See also Applicants' comments regarding Claim 3. This structure is part of that structure which prevents access to providers of

common services to the community through a municipality that has been dedicated the public rights-of-way or otherwise. This is more structure which is a tangible result within the technological arts which is unobvious in view of Galaty or prior practice.

Claims 57, 58 and 60 claim Applicant's new and novel recordable real estate plat which Applicant's submits is a new and improved and unobvious tangible article within the technological art resulting from Applicants' method. Claims 58 and 60 are each dependent upon Claim 57 and thus include all of the language of Claim 57 and are submitted to be allowable for the same reasons as Claim 57. Claim 58 further requires:

> "said easements include common services easements or easement areas, landscape easements or easement areas, drainage easements or easement areas, utility easements or easement areas, plat easements or easement areas, and in gross easements."

Claim 60 further requires:

> "said plat shows the dedication of only surface easements to said municipality for roadways, curbs, and sidewalks and shows the exclusive rights of said legal access entity to said developed community."

All of Applicants' comments above regarding Claims 1, 2, 8, 14, and 33 are related to Applicants' plat.

Claims 42, 43, 61, 65, 66, 68, 69 and 70 are each dependent from Claim 1. Thus each of these claims include all of the language of Claim 1 and are submitted to be allowable for the same reasons as reiterated hereinabove with regard to Claim 1. Claim 42 further requires:

> "said common services are provided to developed community through a single source."

Claim 43 further requires:

> "said license agreements provide common services for said community through a single source."

Claims 42 and 43 require license arrangements with an access entity to permit access and utilization of private easements wherein the owners of lots within the community contract with a single source provider for the provisions of common services. This structure is part of that structure which prevents access to providers of common services to the community through a municipality that has been dedicated the public rights-of-way or otherwise. This concept is an entirely new, useful and unobvious result within the technological arts in view of Galaty or any prior usage.

Claim 61 further requires:

> "said separating step includes transferring exclusive rights in and to said common services easements within said parcel to aid one or more decision making authority."

Claim 65 further requires:

> "said exclusive rights transferred to said one or more decision making authorities include the right to establish infrastructure for common services on both commonly owned and privately owned areas within said community."

Claim 66 further requires:

> "said exclusive rights transferred to said one or more decision making authorities include the rights to contract with providers of common services for the provision of said common services to said community."

Claim 68 further requires:

> "said common services comprise one or more services selected from the group of services consisting of: cable services, internet services, intranet services, local telephone services, long distance telephone services, video-on-demand services, and security monitoring services."

Claim 69 further requires:

> "said common services comprise one or more services selected from a group of deregulated utility services consisting of: sewer services, water services, gas services, and electricity services."

Claim 70 further requires:

> "each step is performed pursuant to obligations arising out of a system of interrelated contractual requirements regarding the development of said community."

With regard to Claims 61, 65, 66, 68, 69 and 70, see Applicants' comments above regarding similar claims.

Claims 62, 63, 64 and 67 are each dependent upon Claim 61. Thus these claims each include all of the language of Claims 61 and 1 and are submitted to be allowable for the same reasons as reiterated hereinabove with regard to Claims 1 and 61. Claim 62 further requires:

> "said exclusive rights comprise in gross easements and specific area easements."

With regard to Claim 62, Applicants utilize exclusive rights consisting of one or more in gross easements, one or more specific area easements, or a combination of the two. Claim 62 claims exclusive rights which comprise an in gross easement and specific area easements. Only Applicants have recognized the advantages. This choice is not an obvious choice in view of Galaty or general practice or any other teaching or suggestion. Applicants' decisions are made only after an academic analyses of (1) the national policy toward deregulation of industry, (2) the technology available to reduce the cost of providing common services including common ownership and multiple use of infrastructure, and (3) how to obtain and maintain a control over the provision of common services necessary and to avoid interference from the local municipality, the FCC or the FTC. The method claimed by Claim 62 is a new and novel improvement in the technological arts which produces a useful, concrete, and tangible result within the technological arts which is unobvious in view of the teachings of Galaty and prior practice.

Claim 63 further requires:

> "said exclusive rights comprise specific area easements."

Claim 64 further requires:

> "all easements for providing common services within said developed community are restricted by declarations, covenants, and restrictions governing and running with said parcel of real estate."

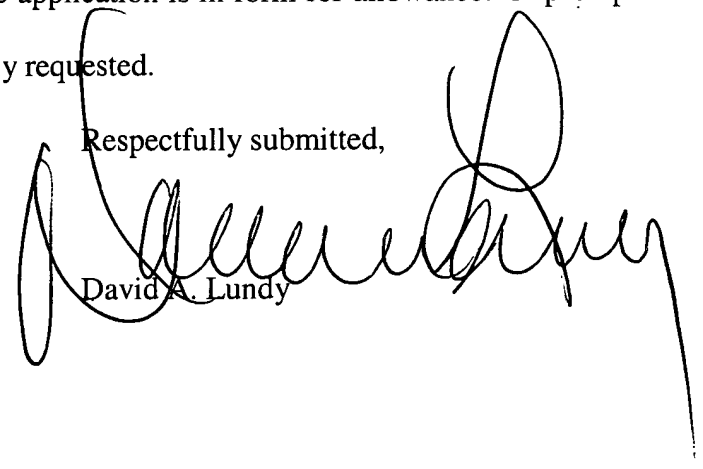
Claim 67 further requires:

> "the step of recording said transferring of said exclusive rights in said or one or more decision making authorities with an appropriate governmental real estate records office before dedicating public rights-of-way for roadways, curbs, and sidewalks to a municipality, said common services easements appearing within the chain of title of the real estate of said developed community before said dedication of said public rights-of-way, said municipality taking said dedication subject to said exclusive rights."

With regard to Claims 63, 64 and 67, see Applicants' comments above with regard to similar claims.

For all the reasons given above Applicants respectfully submit that each of the claims patentably distinguish Applicants' process from all of the prior art known to Applicants. Applicants respectfully submit that the application is in form for allowance. A prompt issuance of a Notice of Allowance is respectfully requested.

Respectfully submitted,



David A. Lundy

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